84-59

No.

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In the Supreme Court of the United States

October Term, 1984

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, *et al.*,
Petitioners,

vs.

HONORABLE ALVIN I. KRENZLER, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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38pp

QUESTION PRESENTED

Whether the District Court abused its discretion in granting a motion to transfer venue in this action in admiralty *in personam*, arising out of the stranding of the vessel, to the District of Minnesota, pursuant to 28 U.S.C.A. §1404(a), because the wreck of the abandoned vessel was located there, when the balance of convenience of all parties and witnesses strongly supported retention in the Northern District of Ohio.

LIST OF PARTIES

The Cleveland-Cliffs Steamship Company,
as owner of the Steamer Frontenac

The Cleveland-Cliffs Iron Company,
as demise or bareboat charterer of
the Steamer Frontenac

Great Lakes Protective Association

New York Marine Managers, Inc.

American Marine Underwriters, Inc.

Reed & Brown, Inc., Managers,
Highlands Insurance Company

Allianz Insurance Company

Texas Marine Underwriters Agency, Inc.

Taisho Marine & Fire Insurance Co.

Underwriters at Lloyd's & Institute Companies

Reserve Mining Company (In original action)

RULE 28.1 STATEMENT

List of subsidiaries and affiliated corporations, partnerships and other enterprises of The Cleveland-Cliffs Iron Company. The remaining Petitioners do not have subsubsidiaries.

Adams Mine, The
Albanel Minerals Limited
Apieco Assurance Ltd.
Atlantic Iron Ores Limited
Cleveland-Cliffs Foundation, The
Cleveland-Cliffs Ore Corporation
Cleveland-Cliffs Steamship Company, The
Cliffs Biwabik Ore Corporation
Cliffs of Canada Limited
Cliffs Copper Corp.
Cliffs Development Company
Cliffs Drilling Company
Cliffs Electric Service Company
Cliffs Empire, Inc.
Cliffs Engineering, Inc.
Cliffs Forest Products Company
Cliffs Fuel Service Company
Cliffs-Getty (Joint Venture)
Cliffs IH Empire, Inc.
Cliffs Incorporated
Cliffs International, Inc.
Cliffs International Investments, Inc.
Cliffs Marquette, Inc.
Cliffs Metals, Inc.
Cliffs Minerals, Inc.
Cliffs Offshore, Inc.
Cliffs Oil Shale Corp.
Cliffs Robe River Iron Associates (Joint Venture)

Cliffs Synfuel Corp.
Cliffs Tilden, Inc.
Cliffs TIOP, Inc. (formerly Cliffs MC Empire, Inc.)
Cliffs Western Australian Mining Co. Pty. Ltd.
Cliffs Western Development, Inc.
Edison-Cliffs-Getty Joint Venture
Empire Iron Mining Partnership
Escanaba Properties Company
Escanaba Properties Partnership
Humboldt Mining Company
International Iron Ores Limited
Ishpeming Mining Company
J&L-Cliffs Ore Partnership
Jay and Sea Corporation
Lake Superior & Ishpeming Railroad Company
Marquette Iron Mining Partnership
Marquette Range Coal Service Company
Mesaba-Cliffs Mining Company, The
Minex Joint Venture
Negaunee Mine Partnership
Pellets, Inc.
Pintec Joint Venture
Pioneer Pellet Plant (Joint Venture)
Roberts Mining Company (Joint Venture)
Sherman Mine (Joint Venture)
Tetapaga Mining Company Limited
Thunderbird (Joint Venture)
Tilden Iron Ore Company
Tilden Iron Ore Partnership
Tilden Mining Company (Joint Venture)
TIOP Financing Corporation
Upper Peninsula Generating Company

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No.

In the Supreme Court of the United States

October Term, 1984

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, *et al.*,
Petitioners,

vs.

HONORABLE ALVIN I. KRENZLER, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioners, The Cleveland-Cliffs Steamship Company, et al., respectfully pray that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Sixth Circuit denying the Petition for Writ of Mandamus of such Petitioners in that Court.

OPINIONS BELOW

The Orders of the District Court entered on October 28, 1982 (Appendix B) and January 11, 1983 (Appendix C) have not been published. The Order of the Court of Appeals decided and filed April 16, 1984 (Appendix A) has not been reported.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was decided and entered on April 16, 1984. The jurisdiction of this Court is invoked under Title 28 U.S.C.A. §1254(1).

STATUTE INVOLVED

The statute involved is 28 U.S.C.A. §1404(a) which states:

§ 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

STATEMENT OF THE CASE

Petitioners The Cleveland-Cliffs Steamship Company and The Cleveland-Cliffs Iron Company are corporations which owned and operated the Steamer Frontenac, a merchant vessel of the United States, in commerce and navigation on the Great Lakes, and the remaining Petitioners are marine insurers which insured the vessel against total loss.

Respondent is a United States District Judge for the Northern District of Ohio, Eastern Division.

This case involves a petition for a writ of mandamus filed by Petitioners in the Court of Appeals against the District Judge, directing Respondent to request the return

of the pleading files from the U.S. District Court for the District of Minnesota, Fifth Division, where they had been transferred pursuant to a motion granted by the District Court under Title 28 U.S.C.A. §1404(a), and ordering that venue of the action be retained in the Northern District of Ohio.

The original action, The Cleveland-Cliffs Steamship Company, as Owner of the Steamer Frontenac, et al., v. Reserve Mining Company, Case No. C82-1712, was filed by Petitioners against defendant Reserve Mining Company ("Reserve") in the U.S. District Court for the Northern District of Ohio, Eastern Division, as a result of the stranding of the Str. Frontenac on the evening of November 22, 1979, while approaching to enter the harbor owned and operated by Reserve at Silver Bay, Minnesota, for the purpose of loading a cargo of taconite pellets for transportation to Cleveland, Ohio. The navigation light on Pellet Island at the mouth of the harbor, maintained as a private aid to navigation by Reserve, was not lighted, which was held to be a contributing cause of the casualty by the United States Coast Guard that resulted in the constructive total loss of the Frotenac. Petitioners seek recovery of the resulting damages because of the negligence of Reserve in failing to maintain the navigation light in proper operating condition.

The transfer motion of Reserve conceded jurisdiction in the Northern District of Ohio of the original action but urged the court to transfer venue to the District of Minnesota because Reserve is incorporated in Minnesota and its principal business, the place where the stranding occurred, an unspecificed number of its witnesses, and the wreck of the vessel were located there.

Petitioners opposed the motion to transfer on the ground that the balance of convenience of the parties and

the witnesses was in Cleveland, Ohio, where the action had been filed. The principal offices of The Cleveland-Cliffs Steamship Company, as owner, and The Cleveland-Cliffs Iron Company, as charterer, and Great Lakes Protective Association, the major insurer of the vessel, were located in Cleveland. The material witnesses relied upon by Petitioners either resided in the Northern District of Ohio or were located much closer to Cleveland, Ohio, than Duluth, Minnesota, where transfer was sought. A few witnesses resided in locations where either forum would be equidistant. The supporting affidavits of the parties established that substantial inconvenience and additional expense would be inflicted upon Petitioners if the transfer of venue was granted, to a degree which surpassed the inconvenience to Reserve in defending the action at Cleveland, Ohio.

The District Court nevertheless granted Reserve's motion for a transfer of venue to Duluth, Minnesota, only because the wreck of the vessel was located there and for no other reason, stating:

> "The subject matter of the present action involves the stranding of and subsequent damage to a vessel known as the Str. Frontenac as it approached a harbor owned and operated by the defendant in Silver Bay, Minnesota. The ship itself now lies in the Frazer Shipyard in Superior, Wisconsin, approximately two miles from the federal courthouse in Duluth, Minnesota. Therefore, it is the opinion of this court that trial of this matter would be more convenient in the federal court in Duluth, Minnesota. Accordingly, this action is hereby transferred to the United States District Court for the District of Minnesota, Fifth Division, Duluth, Minnesota."

In denying Petitioners' motion for writ of mandamus, the Sixth Circuit Court of Appeals entered a per curiam order affirming the District Court, thereby adopting a rule that the forum should be determined in admiralty cases in *personam* by the location of the vessel rather than the convenience of the parties and the witnesses (Appendix A), and thus ignored the established principles governing the determination of a motion to transfer under 28 U.S.C.A. §1404(a) that the plaintiff's right to select the forum and the balance of convenience of the parties and the witnesses are primary factors to be considered.

> "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

There is no other case which supports the decisions of the courts below in ruling that the location of a vessel is the sole criterion for determining the proper forum in an admiralty case *in personam* and is of overriding importance in the determination of a motion to transfer venue under 28 U.S.C.A. §1404(a), thus obviating any necessity for considering the convenience of the parties and witnesses and the right of plaintiff to select the forum. It is particularly incorrect in this case to place such great weight upon the location of the Frontenac, because it was sold after the stranding for scrap after it was found to be a constructive total loss, its hulk has been stripped, and it has been or will be completely scrapped. Surveyors have long since completed their examinations of the vessel on drydock and there is no dispute on the extent of the damage. The navigational gear was all removed, as well as other equipment that could be salvaged. There is no perceptible evidentiary value to be gained in looking at the vessel or the location where the stranding occurred. Photographs,

navigational charts, log books, and the testimony of witnesses form the essential proof, as in every other stranding and grounding case, and the builder's plans, classification surveys and Coast Guard inspections will be the essential proof with respect to the condition of the vessel for determination of its value immediately prior to the casualty in respect to recoverable damages.

REASONS FOR GRANTING THE WRIT

I.

By affirming the transfer of this action based solely upon the location of the wreck of the damaged vessel and without regard to the convenience of the parties and witnesses and plaintiff's right to select the forum, the Sixth Circuit has adopted a rule of law in admiralty cases which is not in accord with the governing statute, 28 U.S.C.A. §1404(a), and the principles which control its application. This new rule in the Sixth Circuit is also impractical. Vessels by their very nature as a means of transportation are operated on voyages. Filing an action where the ship is located is only a necessity in maritime actions *in rem* and not *in personam,* where the plaintiffs have always been accorded the same right in the selection of a forum as other plaintiffs.

The Sixth Circuit rejected Petitioners' contention that there was an abuse of discretion by the District Court in transferring venue to the District of Minnesota merely because the abandoned wreck of the vessel was located there, without regard to the balance of convenience of the parties and witnesses as required under 28 U.S.C.A. §1404(a), in a per curiam decision simply citing two cases in which there was no similarity upon facts and in which

the decisions were based upon the balance of convenience of the witnesses (Appendix A). These were not admiralty or maritime cases, and ships were not involved. The facts and principles enunciated in the cited cases are inapplicable to the issues presented here.

The Sixth Circuit did not review the facts upon which the District Court ordered a transfer of venue, and its terse Per Curiam Order (Appendix A) of affirmance cited only two cases, which have no relevance to the propriety of transferring an admiralty case *in personam*, civil and maritime, for vessel damages sustained in a grounding, to another district only because the dismantled wreck and the place of the accident are located there without regard to the balancing of conveniences of parties and witnesses. On the contrary, the principles in those cases support Petitioners' right to file and have this case tried in the Ohio forum they selected. In *Lemon v. Druffel*, 253 F.2d 680, 685 (6th Cir.), *cert. denied*, 358 U.S. 821 (1958), transfer of venue from an Ohio district to a Kentucky district was upheld for the convenience of witnesses, because most of them either lived in Kentucky or resided close to the Kentucky court, thus, "requiring a balancing of conveniences by the District Judge."

The other case cited by the Sixth Circuit, *Panhandle Eastern Pipe Line Co. v. Thornton*, 267 F.2d 459 (6th Cir.), *cert. denied*, 361 U.S. 820 (1959), involved a motion for transfer based upon the alleged inability of defendant to obtain a fair trial in Detroit, Michigan, due to numerous controversies before federal and state courts and tribunals there which resulted in unfavorable publicity and such bias, prejudice, and hostility in the majority of the people that an impartial jury could not be obtained. The transfer was denied and the District Court was affirmed, noting on page 460 that the convenience of parties and witnesses had

been considered by the District Judge and was discussed in his Order denying the motion.

The Order of the District Court (Appendix B) reviewed the provisions of 28 U.S.C.A. §1404(a) and the principles laid down in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947), and then granted transfer of venue *only because the ship is located in Superior, Wisconsin, near the Federal Courthouse at Duluth, Minnesota,* and also stated the stranding occurred at Silver Bay, Minnesota. The statutory requirements for transfer were not considered; the Order does not and could not contain any determination that the balance of convenience of the parties and witnesses outweighs plaintiffs' right to select the forum and thus justify transfer, because nine of eleven plaintiffs' prospective witnesses reside in the Northern District of Ohio and the other two are closer to Cleveland where the plaintiff shipowner, plaintiff vessel operator, and primary underwriter plaintiff are located with their pertinent records of the casualty, whereas defendant Reserve identified a total of four witnesses, two of whom are in its employ and none of whom appear from the record to be unwilling to travel to Cleveland to testify.

A view of the location where the grounding occurred would yield no useful information to the trier of the facts. The shoals are beneath the surface of the water and their location must be determined from navigation charts. Photographs of Pellet Island Light will adequately depict its physical characteristics.

The stripped wreck of the Frontenac lies at a shipbreaker's dock in Superior, Wisconsin, and the damage to the bottom of the vessel is beneath the surface of the water and therefore not visible. A visit to the vessel would provide no relevant evidence. The reports of surveyors on the extent of the damage and the photographs taken while

the ship was drydocked to inspect the damage will have to be relied upon in either forum.

There are no *in personam* admiralty cases, to our knowledge, in which motions for transfer of venue have been granted solely because the vessel is located in the transferee district absent special circumstances, and this basis for transfer has been rejected by lower courts.

In *Clendenin v. United Fruit Co.*, 214 F. Supp. 137 (E.D. Pa., 1963), the plaintiff seaman commenced an action for personal injuries sustained aboard a vessel while at sea. The defendant shipowner's motion to transfer the case to Louisiana for various reasons, including the fact that the ship traded to New Orleans, was denied. The Court stated at page 139:

> "Certain principles are now entitled to hornbook characterization: *The plaintiff's choice of forum is entitled to great weight and defendant has a heavy burden of showing a strong balance of inconvenience.* With these guideposts in mind, I proceed to examine *seriatim* the reasons advanced by defendant for transfer.
>
> * * * * *
>
> "4. The vessel (S.S. Yaque) sails almost continuously in and out of New Orleans. I cannot believe that the absence of the ship from the forum means anything. *Pictures, which defendant can certainly obtain, will supply any visualization thought to be necessary.* (I have never heard of a case being continued because the ship was at sea.)" (Emphasis added.)

See also, *Borden v. Owens-Illinois Glass Co.*, 1967 A.M.C. 75, at 76 (S.D. N.Y., 1966).

The location of a marine casualty as justifying transfer of venue has also been rejected.

National Sugar Refining Company v. M/S Francisville, 1960 A.M.C. 2146 (S.D. N.Y., 1960), was an action arising from the striking of a pier in Philadelphia, in which the defendant shipowner impleaded a tug company. The tug company's motion to transfer the action to the Eastern District of Pennsylvania was denied, since a view of the scene of the casualty was not a material consideration. The Court concluded, at page 2147:

> "The contention that it may become necessary to view the scene of the collision, coming after repairs have been made and when no reason is suggested why photographs will not adequately depict the locale, 'is sheer speculation and counts for nothing on this motion.' *Markantonatos v. Maryland Drydock Co.* (S.D. N.Y.), 110 F.Supp. 862; *Skultety v. Pennsylvania R. Co.* (S.D.N.Y.), 91 F.Supp. 118."

In *Kinsman Transit Co. v. Dunham Towing & Wrecking Co.,* 122 F. Supp. 911 (N.D. Ohio, 1953), the court held that libelant's choice of a forum is an admiralty action *in personam* is a substantial right and should not be disturbed unless balance of convenience lies strongly in favor of respondent irrespective of the location where the accident occurred.

Petitioners contend that the principles which govern transfer of venue in admiralty and maritime actions *in personam* are identical to those in other civil litigation and should be given effect in this case. The essential facts regarding the navigation of the vessel prior to and at the time of the casualty will have to be established by the testimony of the officers and crew members of the vessel who were on duty, and the overwhelming majority of them either reside in the Northern District of Ohio or are closer to that District, where the trial would be held

in Cleveland, Ohio, than they are to the Minnesota District Court sitting in Duluth, Minnesota. The affidavits which were filed clearly confirmed the balance of convenience of all witnesses to be in the forum selected for the filing of the action, thus militating against transfer. Of the crew members on duty when the casualty occurred, the third mate, third assistant engineer, and three unlicensed crew members reside within the Northern District of Ohio. The master resides in New Hampshire, much closer to Cleveland than to Duluth. The first mate lives in Pennsylvania, much closer to Cleveland than to Duluth. To be required to take these witnesses to Duluth to testify would obviously be inconvenient and create hardship and additional expense to Petitioners.

The principal offices of the owner and operator of the vessel are located in Cleveland, Ohio, and potential witnesses among its office staff, including the operations manager of the Marine Division and the fleet engineer, are located there.

The principal surveyor of the U.S. Salvage Association, Inc., attended the vessel on strand as wreck master until it was refloated and taken to a shipyard, where he made a survey on drydock. His office is located in Cleveland, Ohio, and he resided within the Northern District of Ohio at the time the action was filed. He will be a witness with respect to damage and salvage questions.

The principal surveyor and president of North American Marine, Inc., at the time of the casualty resided in Bay Village, Ohio, within the Northern District, and he is a witness on the value of the vessel immediately prior to the constructive total loss.

The convenience of the parties is also to be considered in ruling upon a motion to transfer venue. The marine

insurers are represented by Johnson & Higgins of Ohio, Inc., of Cleveland, Ohio, and Great Lakes Protective Association, one of the principal insurers of the vessel, also maintains its office in Cleveland, Ohio. As previously pointed out, the owner and operator of the vessel have their principal offices in Cleveland, Ohio, where the action was instituted.

The affidavits submitted in support of the transfer of venue by defendant Reserve stated that there were two witnesses who observed the grounding from a distance during a snowstorm which obscured vision and rendered the proper maintenance of the navigation light on Pellet Island of even greater importance. Additional witnesses were a marine surveyor residing in Duluth who examined the vessel and would be called to testify on value, and a company official. Navigation experts residing in Ohio and Arizona were subsequently identified. It is clear that it would actually be much more inconvenient and expensive for Petitioners to try the case in Duluth than it would be for defendant Reserve to bring its witnesses to Cleveland. Thus, there is no valid basis for transfer of venue under the provisions of Title 28 U.S.C.A. §1404(a) and the cases interpreting and clarifying the elements which must be present to justify transfer.

There are no special considerations in this case which support transfer of venue. The proximity of Pellet Island and Silver Bay harbor, Minnesota, to Duluth, is not of any significance since shoals upon which the vessel stranded are beneath the surface of the water and viewing the scene would disclose nothing. The charts show the location of the shoals and the depths of the water, which are available at trial anywhere. The damage below the waterline of the abandoned wreck of the vessel is not visible except on drydock. Consequently, the balance of

convenience to witnesses and parties, together with the recognized right of the plaintiff to select a forum, are the controlling factors.

The District Court also abused its discretion after granting the motion for transfer of venue stating that trial would be more convenient in Duluth because the stranding occurred in that District and the vessel was located there, by immediately forwarding the file to the District Court in Minnesota and rejecting plaintiffs' motion for reconsideration.

II.

The clearly erroneous standard applicable to civil appeals, both from final judgments and appealable interlocutory orders, should be applied. See *Nicol v. Koscinski*, 188 F.2d 537 (6th Cir., 1951); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947); *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947); *Star Lines, Ltd. v. Puerto Rico Maritime Ship. A.*, 442 F. Supp. 1201 (S.D. N.Y., 1978).

The discretion of a District Court to grant a transfer of venue motion is limited by the enabling statute, 28 U.S.C.A. §1404(a), to a consideration of the balance of the convenience of the parties and witnesses in the interest of justice, and it is clearly erroneous to depart from the statutory standards as interpreted and adopted by this Court.

CONCLUSION

A petition for writ of certiorari should be granted to review the Order of the Sixth Circuit transferring venue under Title 28 U.S.C.A. §1404(a) in this admiralty action *in personam* where there are no special evidentiary considerations rendering the location of the vessel of any importance for the trial of the action, and to order the return of the case to the Northern District of Ohio from the Northern District of Minnesota.

Respectfully submitted,

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APPENDIX A

Order and Opinion of the United States Court of Appeals for the Sixth Circuit

(Filed April 16, 1984)

No. 83-3064

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY; AS OWNER OF THE STR. FRONTENAC; THE CLEVELAND-CLIFFS IRON COMPANY, AS DEMISE OR BAREBOAT CHARTERER OF THE STR. FRONTENAC; GREAT LAKES PROTECTIVE ASSOCIATION; NEW YORK MARINE MANAGERS, INC.; AMERICAN MARINE UNDERWRITERS, INC.; REED & BROWN, INC., MANAGERS; HIGHLANDS INSURANCE COMPANY; ALLIANZ INSURANCE COMPANY; TEXAS MARINE UNDERWRITERS AGENCY, INC.; TAISHO MARINE & FIRE INSURANCE CO.; AND UNDERWRITERS AT LLOYDS & INSTITUTE COMPANIES,

Petitioners.

ORDER

BEFORE: ENGEL, KEITH, and MARTIN, *Circuit Judges*

Petitioners seek an order in the nature of mandamus directing the district court to (1) vacate its order granting a motion to transfer this case pursuant to 28 U.S.C. §1404

(a) and (2) request return of the pleading files from the Minnesota district court.

Upon consideration, the Court concludes that the district court did not abuse its discretion in granting Reserve Mining Company's motion to transfer. *Lemon v. Druffel*, 253 F.2d 680, 685 (6th Cir.), *cert. denied*, 358 U.S. 821 (1958); *Panhandle Eastern Pipe Lines Co. v. Thorton*, 267 F.2d 459, 461 (6th Cir.), *cert. denied*, 361 U.S. 820 (1959).

Accordingly, it is ORDERED that the petition for a writ of mandamus be, and is hereby, denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX B

Order of the United States District Court

(Filed October 28, 1982)

Case No. C82-1712

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLEVELAND-CLIFFS STEAMSHIP COMPANY, AS OWNER OF THE STEAMER FRONTENAC, *et al.*
Plaintiffs,

vs.

RESERVE MINING COMPANY,
Defendants.

ORDER

Pending before the Court is the defendant's motion for an Order transferring this action, pursuant to 28 U.S.C. § 1404(a), to the United States District Court for the District of Minnesota, Fifth Division.

28 U.S.C. § 1404(c) [sic] provides:

> (c) [sic] For the convenience of parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The purpose of this action is to prevent waste of time, energy, and money and to protect litigants against un-

necessary inconvenience and expense. *Van Dusen v. Barrack,* 376 U.S. 612 (1964). In determining whether to transfer an action for the convenience of the parties and witnesses and in the interests of justice, the Court is vested with wide discretion. *Fanin v. Jones,* 229 F. 2d 368 (6th Cir. 1956).

The initial inquiry under the statute is whether the action could originally have been brought in the district it is to be transferred to. In an admiralty action, such as this, the venue provisions of 28 U.S.C. §§ 1391-1393 do not apply. Fed. R. Civ. P. 82. Venue in an admiralty action is proper in any district where valid service of process could have been made upon the defendant. No admiralty rule governs the place where a corporation may be served with process but admiralty practice is substantially similar to Fed. R. Civ. P. 4. *Societe Com. de Transp. Transatl. v. S.S. "African Mercury",* 366 F. Supp. 1347 (S.D.N.Y. 1973). Accordingly, as the defendant is a Minnesota corporation doing business there, and the cause of action arose in Minnesota, service could be made on the defendant in the District for Minnesota and therefore venue is proper there.

Having determined that this action could have been brought in Minnesota originally the issue becomes whether this action should be transferred there. In determining whether the doctrine of forum non conveniens should be applied, a court should consider the private interests of the litigant, relative ease of access to sources of proof, availability of compulsory process for the attendance of unwilling witnesses, the possibility of viewing the premises, the relative advantages and obstacles to a fair trial and all other practical problems that make the trial of a case easy, expeditious and inexpensive, as well as the enforce-

ability of any judgment obtained. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

The subject matter of the present action involves the stranding of and subsequent damage to a vessel known as the Str. Frontenac as it approached a harbor owned and operated by the defendant at Silver Bay, Minnesota. The ship itself now lies in the Frazer Shipyard in Superior Wisconsin approximately two miles from the Federal Courthouse in Duluth, Minnesota. Therefore, it is the opinion of this Court that trial of this matter would be more convenient in the Federal Court in Duluth, Minnesota. Accordingly, this action is hereby transferred to the United States District Court for the District of Minnesota, Fifth Division, Duluth, Minnesota.

IT IS SO ORDERED.

/s/ ALVIN I. KRENZLER
United States District Court

APPENDIX C

Order of the United States District Court

(Filed January 11, 1983)

Case No. C82-1712

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, as Owner of the Steamer Frontenac, *et al.*,
Plaintiffs,

VS.

RESERVE MINING COMPANY,
Defendant.

ORDER

(Filed January 11, 1983)

On October 28, 1982 this Court granted the defendant's previously filed motion to transfer venue in this action pursuant to 28 U.S.C. §1404(a), and entered an Order transferring this action to the United States District Court for the District of Minnesota, Fifth Division. Presently pending before the Court is the plaintiff's motion for reconsideration of this Court's October 28, 1982 order.

This Court, having transferred this action pursuant to 28 U.S.C. §1404(a), no longer has jurisdiction over the action and therefore cannot order it retransferred to this

district. *IN RE MILLER*, 485 F.2d 74 (5th Cir. 1973). See also, *THARP v. TRANSWORLD DRILLING COMPANY*, 367 F.Supp. 521 (W.D.Okla. 1973). Accordingly, plaintiff's motion is denied.

IT IS SO ORDERED.

/s/ ALVIN I. KRENZLER

United States District Court